Supreme Court, U.S.
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No. 92-1158

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1992

KAREN M. PHELAN AND CHARLENE PHELAN, AS CO-ADMINISTRATORS OF THE ESTATE OF SHANE P. PHELAN, DONALD V. FITZGERALD AND MARK COTTON,
*Petitioners,*

v.

LOCAL 305 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA AND TERRENCE QUINN,
*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

## BRIEF IN OPPOSITION

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*Petitioners,*

v.

LOCAL 305 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA AND TERRENCE QUINN,

*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

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## BRIEF IN OPPOSITION

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### COUNTERSTATEMENT OF THE CASE

A. The petitioners here, who were plaintiffs in the trial court, are Shane P. Phelan, Donald V. Fitzgerald, and Mark Cotton, each of whom, at all times relevant to this litigation, was a member of Local 76, a local building trades craft union located in Hartford, Connecti-

cut. Local 76 is affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("United Association"), an international building trades craft union with local affiliates throughout the nation.

The respondents here, who were among the defendants in the trial court, are Local 305, another local building trades craft union that is affiliated with the United Association, and the business manager of Local 305, Terrence Quinn. Local 305 is located in Uncasville, Connecticut. None of the petitioners were members of Local 305.

In essence, the petitioners' claim in this case is that when petitioners sought work through the Local 305 hiring hall, Local 305 and its business manager, Terrence Quinn, discriminated against petitioners because they were active in the internal political affairs of Local 76 as political opponents of Local 76's business manager, Patrick Quinn. Patrick Quinn is Terrence Quinn's brother. And, petitioners further claim that such hiring hall discrimination by Local 305 and its business manager—even if directed against individuals who are not members of Local 305—constitutes a violation of Title I of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. §§ 411 *et seq.*, which regulates the internal affairs of unions by providing union members a bill of rights.

Given the nature of this claim, two background points are worthy of note.

*First*, the hiring hall in question was operated by Local 305 pursuant to collective bargaining agreements between that local and area employers and, like all such hiring halls, was required, under the National Labor Relations Act ("NLRA"), to accept and refer applicants without regard to the applicant's union membership. *See* p. 8, *infra*. *See also* 29 U.S.C. §§ 158(b)(1)(A) & (2); J.A. 730.

*Second*, the United Association's Constitution requires that a member of one affiliated local union deposit a "travel card" obtained from his/her home local with any other local in which he/she is seeking work. That Constitution also specifies that such a "traveler" does not thereby become a member of the second local. Rather, the traveler remains a full member of his/her home local—with all rights and obligations within that home local continuing in full force—unless and until the traveler applies for transfer and satisfies the detailed transfer requirements of the United Association. Pet. App. 24a-26a. It is undisputed that none of the petitioners ever sought—much less effected—a transfer of his membership from Local 76 to Local 305.

B. In February 1985, ten months prior to filing the instant action in federal court, petitioners filed charges with the National Labor Relations Board ("NLRB"), alleging that the actions of Local 305 at issue in this case constituted unfair labor practices under NLRA §§ 8(b)(1)(A) and 8(b)(2), 29 U.S.C. §§ 158(b)(1)(A) & 158(b)(2), in that those actions amounted to unlawful hiring hall discrimination by Local 305 against petitioners. Petitioners prevailed before the NLRB on these hiring hall discrimination claims and received a substantial backpay award. Pet. App. 8a; J.A. 1616, 1633.

In addition, two of the three petitioners (Phelan and Cotton)—along with another Local 76 member who is not involved in the instant case—also filed NLRB charges against their home local, Local 76, alleging that Local 76, through business manager Patrick Quinn, had engaged in discriminatory actions against them with respect to their efforts to obtain out-of-town employment. Pursuant to a settlement of those charges—reached in June 1985—Local 76 agreed to pay the charging parties a substantial monetary sum in return for the charging parties' release of any and all Local 76 officers and agents from any

liability for discriminatory actions that might have been within the scope of the NLRB charges and that occurred prior to the date of the agreement. Pet. App. 9a-10a, 61a-63a; J.A. 1652, 1664, 1666-1667.

Then, on December 3, 1985, petitioners filed the instant suit against, *inter alia*, Local 305 and Terrence Quinn. Among petitioners' allegations against respondents was the claim that the discriminatory hiring practices at issue constituted a breach of the duty of fair representation that Local 305 owes to job applicants by virtue of the NLRA, and the claim that the same practices constituted a violation of Title I of the LMRDA. With respect to the Title I claims, petitioners did not allege in their complaint that Local 305 or Terrence Quinn were agents of Local 76; and throughout this litigation, petitioners have reaffirmed that their theory of Title I liability is *not* based on any such theory of agency. *See* Pet. App. 18a; *see also* Brief of Plaintiffs-Appellees/Cross-Appellants in Second Circuit, No. 91-9145L, at 19 n.17.[1]

C. On May 17, 1990, the United States District Court for the District of Connecticut dismissed petitioners' duty of fair representation claim on statute of limitations grounds. In later rulings, the district court refused to dismiss the Title I claims, rejecting respondents' argument that Title I provides subject matter jurisdiction

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[1] The complaint included a number of other theories of action and a number of other defendants. Other defendants named in the complaint included the United Association, a plumbing industry employer, two employer associations, and Patrick Quinn. The district court dismissed all claims against the employer, and no appeal was taken. The district court also dismissed all claims against the United Association, and the Second Circuit rejected petitioners' challenges to those dismissals. The claims against the employer associations were all withdrawn. Some claims against Patrick Quinn have been dismissed, others sustained, and others await further proceedings.

No defendants in this case, other than Local 305 and Terrence Quinn, are respondents in this Court. No claims other than the Title I claims are here at issue.

only with respect to claims brought by union members against the union with which those plaintiffs have a union-member relationship (and the agents of that union). Pet. App. 68a-79a, 95a-102a.

On November 16, 1990, petitioners prevailed on these Title I claims in a jury trial conducted by a magistrate, with the jury awarding backpay and punitive damages against respondents. Pet. App. 13a.

On August 25, 1992, in the decision that is the subject of the instant petition, the United States Court of Appeals for the Second Circuit reversed the judgment of the district court with respect to the Title I issue. In a unanimous opinion by Circuit Judge Meskill—joined by Circuit Judge Newman and District Judge Arcara (sitting by designation)—the Second Circuit held that Title I regulates only the relationship between a union and its members and thus grants rights to union members only against the union to which they belong (as well as agents of that union). On this basis, the Second Circuit dismissed petitioners' Title I claims. Pet. App. 13a-26a.

## ARGUMENT

The Second Circuit's decision in this case is the most recent of a long, uniform line of decisions that recognize—and rest on—the proposition that Congress, in passing Title I of the LMRDA, "'regulated only the relationship between [a] union and its members,' not other relationships." Pet. App. 16a (*quoting Abrams v. Carrier Corp.*, 434 F.2d 1234, 1250 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009 (1971). This proposition is deeply grounded in the LMRDA's statutory language, history and structure. *See* pp. 7-8, *infra*.

Given this, the decision below is not only clearly correct; it is unexceptional. Petitioners' claim of a conflict in the circuits on the issue presented here—whether a

member of one local union has a valid LMRDA Title I claim against a second local union without making any showing that the second local is acting as the agency of the first—is unsound. *See* pp. 10-11, *infra*. Petitioners' claim that this issue is of general practical importance is even more devoid of substance. *See* p. 9, *infra*. Petitioners' effort to create a conflict at the level of general principle between the fact-specific decision below and Title I decisions treating with entirely distinct legal questions rests on a misreading of the decisions petitioners invoke. *See* pp. 11-12 *infra*. And, petitioners' argument that all affiliated local unions should be treated as a single legal entity ignores 70 years of this Court's jurisprudence. *See* pp. 12-13, *infra*.

For all of these reasons, the *certiorari* petition should be denied.

A. The federal courts have time and again dismissed LMRDA Title I claims alleging interference with, or retaliation for, a union member's internal union activities when those claims are directed against *any* defendant other than (i) the union to which the plaintiff belongs or (ii) a person acting as the agent of such a union and exercising that union's authority over its members. The decision below rests on and continues this consensus. *See, e.g., Bass v. Boilermakers Local 582*, 630 F.2d 1058 (5th Cir. 1981) (dismissing Title I claims by union members against apprenticeship trust fund); *Gavin v. Structural Iron Workers Local No. 1*, 553 F.2d 28 (7th Cir. 1977) (dismissing Title I claims by union members against a local union other than the local to which plaintiffs belonged); *Miller v. Holden*, 535 F.2d 912 (5th Cir. 1976) (dismissing Title I claims by union members against education trust); *Hays v. Consolidated Serv. Corp.*, 517 F.2d 564 (1st Cir. 1975) (dismissing Title I claims by union members against employer); *Abrams v. Carrier Corp., supra* (same); *Duncan v. Peninsula Shipbuilding Ass'n*, 394 F.2d 137 (4th Cir. 1968) (same);

*Thompson v. New York Cent. R.R. Co.*, 361 F.2d 137, 145 (2d Cir. 1966) (same); *Tomko v. Hilbert*, 288 F.2d 625 (3d Cir. 1961) (dismissing Title I claims by union member against fellow union member who acted without any apparent authority from the relevant union); *Tobin v. Barry*, 678 F.Supp. 1018, 1028 (S.D.N.Y. 1987) (dismissing Title I claims by union member against employer association); *Maier v. Patterson*, 553 F.Supp. 150 (E.D. Pa. 1982) (dismissing Title I claims by union member against union officer who acted without any apparent authority from the relevant union).

B. Not surprisingly, this wealth of decisional law is firmly grounded in the language and legislative history of Title I. The LMRDA provides that to be a "member" of a labor organization an individual must have "fulfilled the requirements for membership in such organization." LMRDA § 3(o), 29 U.S.C. § 402(o). Petitioners could not meet this definition of membership with respect to Local 305, since, contrary to the applicable United Association requirements, petitioners never even applied for Local 305 membership. *See* Pet. App. 25a-26a. And, each of the statutory provisions stating the rights asserted in the instant action describe those rights with specific reference to the union to which the member belongs. *See, e.g.*, LMRDA § 101(a)(1), 29 U.S.C. § 411(a)(1) (providing each member of a labor organization with equal rights of participation "within such organization," subject to reasonable rules "in such organization's constitution and bylaws"); LMRDA § 101(a)(2), 29 U.S.C. § 401(a)(2) (providing each member of a labor organization with the right to freely speak and assemble "with the members . . . of the labor organization," subject to "the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member towards the organization as an institution").

Title I's legislative history is to the same effect. Senator McClellan—who sponsored the floor amendment that

became Title I—explained that the purpose of his proposal was to establish "minimum standards of democratic process and conduct for the administration of *internal union affairs*" in order to ensure that "the individual worker" would not be "helpless *within his union*," and in order that "unions . . . should be compelled by law to represent *their members* in accordance with democratic principles." *See* 105 Cong. Rec. 5806 (1959) (emphasis added), *reprinted at* II NLRB, Legislative History of the LMRDA 1098. Title I's legislative history does *not* contain a single reference to providing a union member any rights vis-a-vis any person outside of the union-member relationship.

C. Petitioners do not point to anything in the LMRDA or its legislative history that suggests a congressional intent to grant rights or impose duties that go beyond the union-member relationship. Instead, petitioners rest on the claim that the LMRDA *must* be given such a broad scope to safeguard against the possibility that a local union—especially one operating a hiring hall—might otherwise be free to engage in invidious discrimination against the members of "sister" local unions. *See* Pet. 13-16. Nothing could be further from the truth.

*First*, any kind of discrimination by a local union in administering its hiring hall based on the applicant's union activities or union membership—regardless of the identity of the applicant's union—is a clear unfair labor practice under NLRA §§ 8(b)(1)(A) and 8(b)(2), 29 U.S.C. §§ 158(b)(1)(A) & 158(b)(2). *See* Hardin, *The Developing Labor Law*, 270-71 (1992) ("refusal to dispatch 'travelers' or refusal to refer members because of their criticism of or opposition to union leadership violates sections 8(b)(1)(A) and 8(b)(2) of the [National Labor Relations] Act"). *See generally Breininger v. Sheet Metal Workers*, 493 U.S. 67, 75-76 n.3 (1989) (summarizing NLRB decisional law on hiring hall discrimination); Hardin, *supra*, at 270-74, 1537-43 (same).

Indeed, as we have noted, petitioners here filed charges against Local 305 on precisely this theory and prevailed before the NLRB, obtaining a substantial backpay award. *See* p. 3, *supra*; *see also* Pet. App. 8a.

*Second*, this kind of hiring hall discrimination is also a clear violation of a union's statutory duty of fair representation under the NLRA and is actionable in court as such. *See Breininger v. Sheet Metal Workers*, *supra*, 493 U.S. at 73-90 (upholding duty of fair representation action for damages brought by victim of politically motivated hiring hall discrimination). Again, as we have noted, petitioners pled a duty of fair representation claim premised on precisely this theory in their complaint. *See* p. 4, *supra*. This claim was dismissed *only because petitioners' claim in this regard was time-barred. See id.*; *see also* Pet. App. 26a-43a.

*Third*, there is authority that hiring hall discrimination by a local union other than the union to which the plaintiffs belong may give rise to Title I liability, *if the plaintiffs allege and prove that the "sister local" or its officers were acting as agents of the union in which plaintiffs were members.* But, as the Second Circuit noted, *petitioners in this case expressly disclaimed any such theory. See* Pet. App. 18a; *see also* p. 4, *supra*.[2]

Plainly, then, there are ample deterrents to union misconduct of the kind complained of here. The hyper-technical question presented by the petitioners here arises only because of the peculiar litigation history of this case. The decision below simply has no general, practical import.

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[2] This litigation decision by petitioners may have been a consequence of the fact that, as we have noted, two of the three petitioners had entered into a comprehensive settlement agreement with Local 76—viz., the local to which they belonged—waiving further actions against that local *or its agents*. *See* Pet. App. 18a, 61a-64a. *See also* pp. 3-4, *supra*.

D. Petitioners have cited only one federal case in which union members have been permitted to proceed with an LMRDA Title I action against a union other than the union to which those plaintiffs belonged. *Harris v. Plasterers & Cement Masons Local No. 406*, 619 F.2d 1164 (7th Cir. 1980). But, *Harris* decided *only* that, under certain very narrow circumstances, it is proper to treat one local union *as the agent* of a second local union, exercising that second union's legal authority with regard to the membership rights of that second union's members. *Harris* does *not* support the broad proposition that an individual can generally bring Title I claims against a local union with which that individual has no union-member relationship.[3]

Given its limited scope, *Harris* is not in conflict with the decision here .

*First*, as the Second Circuit noted, "plaintiffs expressly disclaim[ed] an agency theory in this case." Pet. App. 18a. *See also* p. 4, *supra*. What petitioners asserted here, and what the Second Circuit rejected, was a claim that a

[3] The plaintiffs in *Harris* lost their membership in their local union because of allegedly improper disciplinary proceedings taken against them by a "sister" local union while plaintiffs worked under the jurisdiction of that "sister" local. Plaintiffs had not become members of the "sister" local. As the Seventh Circuit explained, the "sister" local's action affected the plaintiffs' membership rights in their own local only because the constitution of the international union—a document to which both local unions had agreed—obliged a local union to expel any member if the member failed to pay any disciplinary fines imposed by another local while the member worked under that other union's jurisdiction. *See* 619 F.2d at 1167.

Under these circumstances, the Seventh Circuit concluded that plaintiffs' home local "had, through the constitution, delegated [its] disciplinary power over [its own] members to any local under whose jurisdiction a traveling member worked." *Id.* Because the "sister" local exercised this delegated disciplinary power to obtain the expulsion of plaintiffs from the local in which they were members, the "sister" local acted in this regard as an agent of the home local, wielding the home local's legal authority over its members. *Id.*

Title I action lies against a defendant union to which the plaintiff does not belong *even where that union is not acting as the agent of the union to which the plaintiff does belong.* Therefore, *Harris*, which rests on a theory of agency, is of no help to petitioners.

*Second*, even apart from petitioners' disclaimer, *Harris* has no application to the facts of this case. The actions of the "sister" local union here which form the basis of petitioners' complaint—all of which involve the "sister" local's operation of its own hiring hall, and none of which altered the plaintiffs' membership status in their home local—do not even arguably constitute the exercise of a delegation of authority by petitioners' home local union over the membership rights and status of the latter's members. Indeed, *Gavin v. Structural Iron Workers Local No. 1*, 553 F.2d 28 (7th Cir. 1977), suggests that for this reason petitioners' Title I claims would have been dismissed even if brought in the Seventh Circuit. *Gavin* dismissed a Title I action by members of one local union against a "sister" local union within whose jurisdiction the plaintiffs were working, on the basis that plaintiffs were only working in the "sister" local's jurisdiction and were not members of the "sister" local.

Against this background, there is no conflict between the decision below and the Seventh Circuit's *Harris* decision regarding any Title I issue actually presented here. To be sure, the Second Circuit decision states that the court "declined to follow" *Harris*, and expressly criticized the *Harris* case's flexible approach to Title I jurisdiction. Pet. App. 20a. While we share the Second Circuit's position in this regard, we emphasize that, because petitioners' claim here would have no merit even under *Harris*, the potential conflict between *Harris* and the decision below is purely hypothetical with regard to any issues actually presented by this case.

E. Petitioners cite *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980) and *Finnegan v. Leu*, 456 U.S. 431, 441

(1982), for the broad proposition "that *any* person who participates in a scheme to suppress union dissent is liable to his victims under the LMRDA." Pet. 20-21 (emphasis added). Petitioners also cite *Keene v. Operating Engineers*, 569 F.2d 1375, 1381 (5th Cir. 1978), and *Morrissey v. NMU*, 544 F.2d 19, 24 (2d Cir. 1976), for the broad proposition that an individual's exercise of *any* union authority can be the basis of Title I liability. *See* Pet. 22-23. Petitioners then argue that the decision below is concontrary to these basic principles of LMRDA law.

Very simply stated, petitioners misread *Shimman, Keene, Morrissey* and *Finnegan*. Each of these cases concerned the scope of Title I claims in the context of defendants who acted *under color of the authority of the union to which the plaintiffs belonged*. None is even remotely concerned with the proper approach to cases such as this one—in which the plaintiffs and defendants had no union-member relationship.[4]

F. The close of the *certiorari* petition is devoted to the argument that Title I should be construed to cover all claims by the members of one local union against any *affiliated* "sister" local. *See* Pet. 23-25. This is so, the petitioners argue—*without any supporting citations at all*—because all union authority within any international union stems from the international. The affiliated sister local unions are, under this view, simply subdivisions of the same union authority. *See, e.g.*, Pet. 24. ("It is the constitution of an international union which . . . legiti-

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[4] *See, Finnegan, supra* (action by a union member against his own union alleging an unlawful dismissal from his position as employee of that union); *Shimman, supra* (action by local union members against an officer of same local, and against two local members who, at the local officer's urging, attended local meetings to prevent dissidents from speaking); *Keene, supra* (action by local union member against officers of same local union); *Morrissey, supra* (action by international union member against officers of same international union).

mizes *all* union authority. The authority of a local official derives from the international's [authority], and is delegated to him or her by the constitution.")

There is no mystery as to why petitioners cite no authority for this view of the relationship between an international union and its affiliated local unions. The reason is that *no* authority for this view exists. Indeed, for at least 70 years, it has been well-settled by this Court that local unions which have affiliated with an international union do not by that affiliation lose their status as autonomous, legally separate entities, whose actions are presumed to be independent exercises of their own authority in the absence of contrary proof. *See United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 395 (1922) (holding that local unions which had affiliated within highly centralized international unions were nevertheless presumed to be legally autonomous entities exercising independent authority); *Coronado Coal Co. v. United Mine Workers*, 268 U.S. 295, 304-305 (1925) (same). *See also Plumbers v. Plumbers Local 334*, 452 U.S. 615, 619 (1981) (reaffirming the *Coronado Coal* understanding of the autonomy of local unions); *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212, 217 (1979) (same).[5]

Since the United Association's constitution does *not* make members of one local union members of all local unions, and does not render the actions of Local 305 the actions of the United Association, or of any other local union, petitioners' argument in this regard is contrary to the governing law as stated by this Court.

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[5] Various provisions of the LMRDA itself are premised on Congress' recognition of this principle and Congress' decision to bolster the very autonomy of local unions that petitioners discount. *See, e.g.*, LMRDA Title III, 29 U.S.C. §§ 461-466 (limitations on international union power to undermine local union autonomy and authority through use of trusteeships).

## CONCLUSION

For the foregoing reasons, this case presents no issues worthy of this Court's plenary review. Accordingly the petition should be denied.

Respectfully submitted,

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